



4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2015-0190; Amdt. No. 91-337]

RIN 2120-AK69

Prohibition of Fixed-Wing Special Visual Flight Rules Operations at Washington-Dulles International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action prohibits fixed-wing special visual flight rules operations at Washington-Dulles International Airport. This action is necessary to support aviation safety and the efficient use of the navigable airspace by managing operations in the busy and complex airspace around the airport.

DATES: This action becomes effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Submit comments on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If the FAA receives an adverse comment or notice of intent to file an adverse comment, the FAA will publish a document in the Federal Register before the effective date of the direct final rule that may withdraw it in whole, or in part.

ADDRESSES: You may send comments identified by docket number FAA-2015-0190 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact David Maddox, Airspace Policy and Regulation Group, AJV-113, Federal

Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8783; e-mail david.maddox@faa.gov.

For legal questions concerning this action, contact Robert Hawks, Office of the Chief Counsel, AGC-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3073; e-mail rob.hawks@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103, Sovereignty and use of airspace, and Subpart III, Section 44701, General requirements. Under section 40103, the FAA is charged with prescribing regulations to ensure the safety of aircraft and the efficient use of the navigable airspace. Under section 44701, the FAA is charged with prescribing regulations to ensure safety in air commerce.

This regulation is within the scope of sections 40103 and 44701 because prohibiting fixed-wing SVFR operations in busy and complex airspace supports aviation safety and the efficient use of navigable airspace.

The Direct Final Rule Procedure

The FAA is adopting this direct final rule without prior notice and public comment because it formalizes current FAA practice at Washington-Dulles International Airport (IAD). Given the volume and complexity of instrument flight rules (IFR) traffic, a request to operate special visual flight rules (SVFR) would be denied. However, no such clearances have been

requested for at least several years. Therefore, the FAA does not anticipate any negative comments to this direct final rule.

The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11034; Feb. 26, 1979) provide that to the maximum extent possible, operating administrations for DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The Agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this direct final rule.

A direct final rule will take effect on a specified date unless the FAA receives an adverse comment or notice of intent to file an adverse comment within the comment period. An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. Under the direct final rule process, the FAA does not consider the following types of comments to be adverse:

(1) A comment recommending another rule change, in addition to the change in the direct final rule at issue. The comment is adverse, however, if the commenter states why the direct final rule would be ineffective without the change.

(2) A frivolous or insubstantial comment.

If the FAA receives an adverse comment or notice of intent to file an adverse comment, it will publish a document in the Federal Register before the effective date of the direct final rule that may withdraw it in whole, or in part. If the FAA withdraws a direct final rule because of an adverse comment, the commenter's recommendation may be incorporated into another direct final rule, or the FAA may publish a notice of proposed rulemaking.

If the FAA receives no adverse comments or notices of intent to file an adverse comment, it will publish a confirmation document in the Federal Register, generally within 15 days after the comment period closes. The confirmation document tells the public the effective date of the direct final rule.

See the “Additional Information” section for information on how to comment on this direct final rule and how the FAA will handle comments received. The “Additional Information” section also contains related information about the docket, privacy, and the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

I. Overview of the Direct Final Rule

This direct final rule prohibits fixed-wing SVFR operations at IAD, one of the busiest airports in the United States. The FAA has determined this action is necessary due to the volume and complexity of IFR traffic in the IAD surface area of the Washington Tri-Area Class B airspace.

II. Background

SVFR operations are defined in the Aeronautical Information Manual (AIM) as aircraft operating in accordance with air traffic control (ATC) clearances in Class B, C, D, and E surface areas in conditions less than the basic VFR weather minimums of three miles and 1,000 feet. Such operations are requested by pilots and approved by ATC. Pilots operating under SVFR must have at least one mile of flight visibility and remain clear of clouds. ATC predicate separation of aircraft on known performance and expected routes of flight. Since controllers do not know the exact weather conditions where an SVFR pilot is operating, they generally do not issue control instructions to the SVFR pilot so that the aircraft is not inadvertently placed in

clouds. ATC often will increase standard separation distances for other aircraft operating in proximity, which can result in a loss of efficiency and capacity at airports.

The FAA previously has prohibited fixed-wing SVFR operations at airports with high traffic volumes. Section 3 of part 91, Appendix D, lists the locations where these operations are prohibited. The FAA first prohibited the operation of fixed-wing aircraft under SVFR weather minimums within specifically designated control zones (now designated as surface areas) in 1968. See 33 FR 4096 (Mar. 2, 1968). The FAA determined that increased aircraft operations in the vicinity of airports serving large population centers created conditions that required imposition of restrictions and priorities with respect to airspace and services associated with those operations, including the establishment of procedures giving priority to IFR traffic. Thirty-three major airports were specified as locations where the SVFR minimums would not apply to fixed-wing aircraft operations. The FAA stated that “based upon changing conditions involving safety considerations additional airports may be designated in the future.” Id.

The volume and complexity of IFR operations at IAD now indicate that use of SVFR operations can potentially affect the safe and efficient movement of traffic in the IAD Class B surface area. IAD is located within the Washington Tri-Area Class B airspace. In that same airspace, Baltimore/Washington International Thurgood Marshall Airport (BWI), Ronald Reagan Washington National Airport (DCA), and Andrews Air Force Base (ADW) are included in section 3 of Appendix D. From January 1 to December 31, 2013, there were 329,910 IFR operations at IAD, which included: 162,730 air carrier; 128,636 air taxi; and 38,236 general aviation operations.¹ This volume of instrument operations and instrument approaches justifies

¹ FAA Air Traffic Activity System (ATADS) traffic count, OPSNET (extracted Jan. 23, 2014).

elimination of SVFR operations. In addition to meeting the criteria for elimination, the bulk of instrument operations are air carrier and corporate turbojet aircraft flights.

Aircraft intending to enter the IAD surface area under SVFR would sometimes be operating at altitudes used by IFR arrivals to and departures from IAD. This interference can cause delays for IFR operations.

In addition to its location in the Class B airspace, IAD is also located within the Washington Special Flight Rules Area (SFRA) and is adjacent to the Washington Flight Restricted Zone (FRZ), both of which were established after September 11, 2001, and severely limit flexibility for VFR and SVFR operations to the east of IAD.

Although IAD has experienced increasing volume and complexity of IFR operations since opening, and has been acknowledged on numerous occasions as qualifying for inclusion in section 3, no rulemaking action has been completed prior to this direct final rule. The FAA believes that the volume and complexity of IFR traffic, along with the safety implications of these situations, require the prohibition of SVFR operations in the IAD Class B Surface Area.

III. Discussion of the Direct Final Rule

The FAA is amending part 91, Appendix D, section 3, to add Washington-Dulles International Airport to an existing list of airports for which fixed-wing SVFR operations are prohibited. Currently, air traffic controllers at IAD deny requests for SVFR transitions through Class B airspace due to the volume and complexity of IFR traffic around IAD. This direct final rule formalizes the current practice.

The FAA has determined this action is necessary because of the increasing volume and complexity of IFR operations at IAD. Fixed-wing SVFR operations may interfere with the safe, orderly, and expeditious flow of aircraft operating under IFR in the IAD surface area. This

prohibition also improves efficient use of airspace by reducing workload for air traffic controllers during IFR conditions and reducing delays for IFR operations.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this direct final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the

cost and benefits is not prepared. Such a determination has been made for this direct final rule.

The reasoning for this determination follows:

This direct final rule formalizes and codifies current FAA practice at IAD. Since this direct final rule merely clarifies and codifies existing FAA procedures, the expected outcome will be a minimal impact with positive net benefits, and a full regulatory evaluation was not prepared. Any comments concerning the FAA determination should include supporting justification.

The FAA has, therefore, determined that this final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT’s Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides

that the head of the agency may so certify and a regulatory flexibility analysis is not required.

The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This direct final rule merely formalizes and codifies existing FAA procedures; the expected outcome will have only a minimal impact on any small entity affected by this final rule.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this direct final rule and determined that it will have only a domestic operational impact and therefore will not affect international trade.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$151 million in lieu of \$100 million. This direct final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this direct final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this regulation.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action would have no effect on international regulatory cooperation.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the rulemaking action in this document. The most helpful comments reference a specific portion of the rulemaking action, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. The FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay.

As stated earlier, if the FAA receives an adverse comment or notice of intent to file an adverse comment, it will publish a document in the Federal Register before the effective date of the final rule. If the FAA receives no adverse comments or notices of intent to file an adverse comment, it will publish a confirmation document in the Federal Register, generally within 15 days after the comment period closes. The confirmation document tells the public the effective date of the rule.

Proprietary or Confidential Business Information: Do not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the FOR FURTHER INFORMATION CONTACT section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM,

mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies or
3. Accessing the Government Printing Office's web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Commenters must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this rulemaking action, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

2. Amend section 3 of Appendix D to Part 91 by adding in alphabetical order “Chantilly, VA (Washington-Dulles International Airport)” to read as follows:

Appendix D to Part 91—Airports/Locations: Special Operating Restrictions

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Section 3. * * *

Chantilly, VA (Washington-Dulles International Airport)

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Issued under authority provided by 49 U.S.C. 106(f), 40103(b), and 44701(a) in Washington, DC, on March 17, 2015.

Michael P. Huerta,
Administrator.

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